

This letter discusses a sales incentive program between a supplier and its retailer customer.
(This is a GIL.)

August 16, 2007

Dear Xxxxx:

This letter is in response to your letter dated November 21, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to you for advice on how to treat the Sales & Use Tax on a new customer incentive program we will be implementing soon.

We are shortly to begin operating a program with our regular customers similar to Airmiles. For each \$2.50 spent our customers will be awarded 1 point. They can trade in these points in exchange for gifts which include our products.

We have been advised that in a situation where a customer trades in 24,000 points for a free stairlift, we would not charge them Sales Tax on that purchase, but declare the Use Tax on our tax return, the value being what the product cost to us.

However, as customers this is offered to are resellers, most, if not all, of them have Exemption Certificates, so we do not charge them sales tax on their regular purchases. Do we still have to pay the Use Tax on products given to them for the purpose of resale?

DEPARTMENT'S RESPONSE

When a retailer issues a coupon to a purchaser which entitles the purchaser to a free item conditioned on the purchase of a separate item (two-for-one, buy one get one free, etc.), the retailer's

gross receipts are measured only by the amount actually received from the purchaser (the cost of one item). The result is that tax can only be charged on the amount actually received from the purchaser. The retailer, in this situation, cannot charge tax based upon the value of the free item received because technically the item was not free and no gift was intended. The retailer was simply offering a special price for both items sold.

The situation when a supplier issues “reward points” to a retailer customer based upon a certain amount of sales (measured in the form of points) is somewhat analogous to this. The supplier has not really made a gift, because the retailer customer must earn the points before the retailer customer will receive the “gift.” If the retailer customer trades in his reward points and takes the free stair lift for resale, the supplier is already covered by the resale certificate he took for the sales associated with the “reward points.” However, when the retailer customer sells the stair lift at retail, he will need to pay Retailers’ Occupation Tax and collect Use Tax from his customer. See 86 Ill. Adm. Code 130.2125.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department’s Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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